United States Bankruptcy Court
Central District of California
San Fernando Valley
Judge Maureen Tighe, Presiding
Courtroom 302 Calendar

Friday, April 07, 2017 **Hearing Room 302**

10:00 AM
1:16-12791 Menco Pacific, Inc. **Chapter 11**

#1.00 Second Amended Disclosure Statement Describing Second Amended Chapter 11 Plan

Docket 146

Tentative Ruling:

Before a disclosure statement may be approved after notice and a hearing, the court must find that the proposed disclosure statement contains "adequate information" to solicit acceptance or rejection of a proposed plan of reorganization. 11 U.S.C. § 1125(b). "Adequate information" means information of a kind, and in sufficient detail, so far as is reasonably practicable in light of the nature and history of the debtor and the condition of the debtor's books and records, that would enable a hypothetical reasonable investor typical of the holders of claims against the estate to make a decision on the proposed plan of reorganization. 11 U.S.C. § 1125(a). While the confirmation hearing should contain more detail and parties will be given an opportunity to cross examine the evidence underlying the assumptions made in the plan, this disclosure statement is generally adequate. Each of teh objections is addressed below.

1. JP Morgan Chase Bank

JP Morgan Chase Bank ("JP Morgan") asserts that the Amended Disclosure Statement fails to provide for its unsecured claim in the amount of $247,569.62. See Proof of Claim No. 17-1. Debtor concedes that it inadvertently omitted JP Morgan's claim and will include the claim in Exhibit B to the Amended Disclosure Statement. As such, Debtor must recalculate its pro-rata monthly payments to Class 3 unsecured creditors to account for an added claim of $247,569.62.

Citing to In re Ambanc La Mesa Ltd. Partnership, 115 F.3d 650, 655 (9th Cir. 1997), JP Morgan argues that the new value contribution from Mendoza violates the absolute priority rule. Objection to Debtor's 2nd Amended Chapter11 Disclosure Statement, ECF No. 185, 7:21-28. JP Morgan cites to Ambanc but does not expand

on why the $250,000 contribution would not fall under the "new value corollary" exception to the absolute priority rule. As compliance with 11 U.S.C. §1129(a)(2)(B) is a question reserved for plan confirmation, JP Morgan can renew its objection then; but it must be sure to specify its objection in greater detail. See Ambanc, 115 F.3d at 654 (citing In re Bonner Mall Partnership, 2 F. 3d 899, 908 (9th Cir. 1993)("The new value corollary requires that former equity holders offer value under the Plan that is (1) new, (2) substantial, (3) in money or money's worth, (4) necessary for successful reorganization, and (5) reasonably equivalent to the value or interest received.").

2. **Jon Blumenthal**

(a) General Unsecured Claims.

Blumenthal shares JP Morgan's concern that the unsecured amount listed in the Amended Disclosure Statement does not fully account for all unsecured claims. It correctly asserts that Debtor at various stages lists different amounts in non-priority unsecured amounts. See Amended Schedule E/F (which lists a total amount of $1,546,181.67); See Amended Disclosure Statement Ex. B (which lists a total amount of $1,736,562.90). Debtor's proposed treatment only generally suggests that it will object to unsecured claims to only $1,000,000. It will need to clarify to which claims it may object in order to provide voting unsecured creditors a projection of their pro-rata payouts.

(b) Current Jobs

Blumenthal's main contention is that Debtor does not provide adequate information as to its current projects. It appears that there are five outstanding IFIC bonded projects (the "IFIC Bonded Projects"). These jobs are critical to the approval of the Amended Disclosure Statement because Debtor's projected plan budget and a large part of its means of implementing the plan are contingent on these projects being completed to reduce its liability to IFIC.

Per the Amended Scheduling Order, the Court required IFIC file a declaration regarding "the likelihood that the bonded projects will be complete, plans to complete the projects, and the segregation of proceeds from the bonded projects." Amended Scheduling Order, 2:23-26. On April 5, 2017, IFIC filed the Supplemental Declaration of Steve Sokol (the "Supplemental Sokol Declaration"), which is based on

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an inspection that took place on March 21, 2017. ECF No. 198. Debtor's position is reflected in the Second Supplemental Declaration of Oscar Mendoza (the "Second Mendoza Declaration"). See ECF No. 194.

The following is a breakdown of each side's position on the IFIC Bonded Projects.

	IFIC Bonded Projects[1]	Status	Sokol's Estimated Remaining Costs	Mendoza's Estimated Costs Remaining	Description
1.	**"WP-1"**	Incomplete	$40,000	$52,000 (WP-1 and WP-2)	NASA Project at the Ames Research Center at Moffett Fields entitled. "Unitary Plan Wind Tunnel Make Up Air Piping System, Work Package 1";
2.	**"WP-2"**	Incomplete	$50,000		NASA Project at the Ames Research Center at Moffett Fields entitled. "Unitary Plan Wind Tunnel Make Up Air Piping System, Work Package 2";
3.	**"REDS"[2]**	Incomplete	$615,000		NASA Project at the Ames Research Center at Moffett Fields entitled "Restoration of Electrical Distribution System (REDS)";
4.	**"N254 RER"[3]**	Incomplete	$530,000	$166,155	NASA Project at Moffett Fields entitled "N254 Restore Electrical Reliability (RER)";
5.	**"NAVFAC"[4]**				An ID/IQ Indefinite Date/Indefinite Quantity construction contract with the Naval Facilities Engineering Command-Southwest (NAVFAC)" at 29 Palms.

Non-Bonded Project

6.	**"San Nicolas"**	Incomplete			United State Navy Construction at San Nicolas Island

Declaration of Oscar Mendoza in Support of Opposition to Motion to Convert ("Mendoza Declaration"), ECF No. 181, ¶10; Sokol Declaration, ¶6-28; Second Mendoza Declaration, Ex. 1.

The April 7, 2017 evidentiary hearing on IFIC's Motion for Relief from Stay will serve to clarify as to the status and profitability of the Outstanding Projects. For purposes of this hearing, the Amended Disclosure Statement – read together with Mendoza's declarations – provide adequate information on the state of its current business operations.

(c) Future Jobs

Jon Blumenthal asserts that the Amended Disclosure Statement fails to provide sufficient details on Debtor's future viability. The Amended Disclosure Statement states, "Debtor must continue to obtain government and non-government work in order to fund the Plan" but represents that Mr. Mendoza has been successful in the past in winning government bids. Amended Disclosure Statement, 14:7-12. Debtor has provided adequate information on its future prospects, as its statement is supported by Mendoza's declarations identifying a list of awarded projects:

		Estimated Start Date	Contracted Amount	Estimated Profits	Description
7.					
	"LAUSD"	August, 2017	$10,000,000		Roofing Contract with Los Angeles Unified School District
8.					
	"Baseball"	June, 2017	$2,000,000	$600,000	United States Navy baseball filed construction project
9.					
	"OC"		$4,750,000		Roofing contract with Orange County Public Works;
10.					
	"Arroyo Vista"	Started	$45,974.60		Arroyo Vista Highland Park M189-16
11.					
	"Chatsworth"	Pending	$113,500		Chatsworth High school Re-roofing M190-16
12.					
	"Short"	Pending	$6,003		Short Elementary School M195-17
13.					
	"Santee"	Started	$1,467,376		Santee Tenant Improvements M196-17
14.					

	"OCPW Juvenile Hall"	April, 2017	$143,305.01		OCPW Juvenile Hall Rehab Roof Unit Q
15.					
	"OCWP Law"	Pending	$214,366.43		OCWP Law Library – Roof Repair / Replacement
16.					
	"Unknown"	Unknown	$1,520,000		unnamed non-bonded private project

(collectively, the "Future Projects")

Mendoza Declaration, ¶21; Second Mendoza Declaration, Ex. 3, Ex. 5-1.

This dispute may require a further evidentiary hearing on the expected profit of each of the Future Projects. There may need to be further clarification of the extent to which losses sustained from the Outstanding Projects can be covered profits from the Future Projects. These issues, however, go to the feasibility analysis that is required for confirmation. The plan and how it will be effectuated is disclosed in sufficient detail at this stage.

Whether the Future Projects will be bonded is a question that must be addressed, as that is in dispute. While Mendoza represents that a new surety bonding company, Acstar Insurance Company, has agreed to bond Menco Pacific Inc.'s future work, there is, thus far, no evidence of such an agreement. Second Mendoza Declaration, 1:14-16. That will be a matter best left to a confirmation hearing.

(d) Inadequate Financial Projection

Blumenthal questions Exhibit E – a financing projection of the proposed plan from August 2017 to August 2024. See Amended Disclosure Statement, Ex. E. This optimistic forecast projects a consistent $585,000 in billings, $468,000 in subcontractor and labor costs, $80,875 in total expenses, and $36,125 in net income.

The court agrees that certain items need to be amended in the projected budget. First, its monthly allotment of $11,905 for Class 3 unsecured creditor payments needs to be augmented to account for the $247,569.62 claim of JP Morgan. The budget also needs to be amended to comport with Debtor's proffered declaration of Mendoza, which suggests that income derived from Debtor's future projects will

fluctuate month-to-month. This can most cost effectively be taken care of with an addendum to the disclosure statement to be included in the solicitation package.

(e) Liquidation Analysis

Blumenthal questions the adequacy of Debtor's liquidation analysis as it fails to include clear language about whether the plan is a reorganization or liquidation plan. This appears to have been simply a drafting mistake. Debtor has agreed to change the language to clarify that it is proposing a reorganization plan.

Debtor has adequately addressed the increased costs of a Chapter 7 liquidation arising from trustee fees. This is sufficient for a disclosure statement. At confirmation, the court will consider whether Chapter 7 liquidation would lead to erosion in value of the estate's assets. In particular, would liquidation really serve the "best interest of creditors" as contemplated under 11 U.S.C. §1129(a)(7) if the Debtor's operations are halted? According to the Second Mendoza Declaration, NASA is willing to extend project schedules and reduce liquidated damages resulting from delays. Second Mendoza Declaration, 1:22-25. Would liquidation therefore expose Debtor to liquidated damages for failure to complete its existing jobs and breach of contract claims for failure to satisfy future jobs? Further, many of Debtor's unsecured creditors listed in Exhibit B are vendors and suppliers who are currently working with Debtor in their existing projects. Wouldn't it serve the best interest of creditors to finish these projects? Will the people in charge of the projects work as well with someone new or be willing to endure the delays caused by a changing of the guard? How long has Mendoza worked with these projects, contractors and organizations? These are the questions that may need to be answered as part of a confirmation hearing. There are a number of other considerations in contemplating any liquidation.

(f) Other Issues

Blumenthal's other objections surround inadequate information regarding the Amended Plan's "Exculpation" clause explaining that Debtor's "officers, directors, shareholders, employees" will be released from claims arising post-petition and pre-confirmation. Amended Disclosure Statement, 24:5-27. He also asserts that the Amended Disclosure Statement fails to disclose payment to insider Sylvia Acevedo and payments made post-petition to pre-petition contractors.

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This question of whether releases of third-party non-debtors are permitted by the Bankruptcy Code is an issue reserved for plan confirmation. The plain language of the "Exculpation" clause states that it is subject to any prohibitions of 11 U.S.C. § 1125(e), which addresses statutory immunity as to solicitation. The releases will, of course, also be subject to judicial determination of third-party releases under Section 524(e). See 11 U.S.C. §524(e)(which addresses the effect of discharge on the liability of non-debtors). That is a confirmation issue.

As for its transfers to Sylvia, the February 2017 Monthly Operating Report shows bi-weekly payments of $545.96 to Sylvia Acevedo, who Blumenthal asserts is the mother of Mendoza's son. This is irrelevant to the approval of the disclosure statement as the enforceability of the "Exculpation" clause is unripe. This is something that can easily be cleared up as to whether these transfers need further approval.

Lastly, Debtor's payments to pre-petition creditors are covered under "Significant Events During the Bankruptcy." Debtor admits and lists its pre-petition transfers to creditors in Exhibit D. See Amended Disclosure Statement, 6:19-22; Id. at Ex. D. It states that it will seek to recover those payments where "economically practical." Id. at 6:20-22. Blumenthal contends that Debtor has no incentive to go after these transfers because to do so would go against Mendoza's interest in exculpating his involvement in these transfers. Mendoza has already acknowledged this mistake, and the effect on this case appears to be minimal since these were payments that will likely be authorized for other reasons later. This is not a sufficient cause to deem the Amended Disclosure Statement inadequate.

While the Amended Disclosure Statement contains a few errors, it provides "adequate information" given the unknowns at this stage. See In re Michelson, 141 B.R. at 718-19 ("'Adequate information' is a flexible concept that permits the degree of disclosure to be tailored to the particular situation, but there is an irreducible minimum, particularly as to how the plan will be implemented."). Its treatment of creditors, plan duration, payout to unsecured creditors and liquidation analysis will change upon resolution of the many concurrent motions that are being heard before the Court. Despite these unknowns, the Amended Disclosure Statement and the declarations of Oscar Mendoza provide an adequate roadmap on how Debtor intends to implement its plan of reorganization.

Motion to Approve Second Amended Disclosure Statement GRANTED, conditioned

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upon an addendum explaining:

- JP Morgan's claim to be added onto Exhibit B to the Amended Disclosure Statement
- Greater specificity, if known, of which unsecured creditor claims to which debtor intends to object
- Mendoza's declarations should be included as exhibits to the solicitation package since they contain more detail

The debtor may want to consider service of the solicitation package upon all unsecured Creditors by CD to reduce costs

Party Information

Debtor(s):

Menco Pacific, Inc. Represented By
Jeffrey S Shinbrot

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#2.00 Motion for relief from stay

JON BLUMENTHAL

fr. 12/1/16; 12/15/16, 2/21/17, 3/30/17

Docket 33

Tentative Ruling:

2/21/17 Tentative

Under 11 U.S.C. 362(d)(1) and on request of a party in interest, "the court shall grant relief from stay...for cause." The bankruptcy code does not define cause, outside of lack of adequate protection. Instead, cause is defined on a case-by-case basis. In re Tucson Estates, Inc., 912 F.2d 1162, (9th Cir. 1990). Bankruptcy courts have discretion in determining whether cause exists to modify the stay. In re MacDonald, 755, F.2d 715 (9th Cir. 1985). Cause may exist where a bankruptcy court may abstain from deciding issues in favor of an imminent state court trial involving the same issues. Id. "Courts have identified various factors relevant to determining whether the stay should be lifted to allow a creditor to continue pending litigation in a non-bankruptcy forum. These factors are closely related to those that a bankruptcy court must consider in deciding whether to exercise abstention under 28 U.S.C. 1334 (c)(1)." In re Plumberex, 311 B.R. 551, 558 (Bankr. C.D. Cal. 2004). A number of factors are commonly analyzed to determine whether cause exists to grant relief from the stay. In re Curtis, 40 B.R. 795, 799-800 (Bankr. D. Utah 1984).

III. DISCUSSION

The following factors are implicated here:

1. **Whether Relief Will Result in a Partial or Complete Resolution of the Issues**

Debtor argues that relief from stay would only result in partial resolution because the Superior Court's adjudication of the prejudgment attachment issue would interfere with this Court's potential rejection of the Settlement Agreement. To clarify,

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Debtor's motion to reject the Settlement Agreement needs no further resolution. It is not an executory contract. As explained in the Court's tentative ruling, the Settlement Agreement fails the Countryman Test because no material obligation remained after Debtor's right to cure expired pre-petition on September 12, 2016.

Another issue that requires resolution is the adjudication of the avoidance claims. Specifically, whether Debtor can void the attachment liens as preferential transfers under 11 U.S.C. §547 or actual or constructive fraudulent transfers under 11 U.S.C. §548. Amended Adversary Complaint, ECF No. 4. Blumenthal contends that relief from stay would allow the Superior Court to determine the merits for Blumenthal's request for an entry of judgment, and its status as a secured creditor. This would be a fair result if only state law is implicated. Instead, when a bankruptcy is filed before perfection, claim priority is determined by both California perfection law and federal bankruptcy avoidance law. Relief from stay would therefore only resolve one issue and complicate another.

As it currently stands, Blumenthal is not a secured creditor. With only an attachment lien, Blumenthal merely has a potential right or contingent lien that must be perfected by means of a judgment within the statutory period. See Puissegur v. Yarbrough, 29 Cal. 2d 409 (Cal. 1946). Blumenthal has no right to proceed against the property until it is perfected. See Arcturus Mfg. Corp. v. Superior Court, 223 Cal. App. 2d 187 (Cal. App. 1964). He is only a secured creditor once and if a judgment is entered,

Blumenthal argues that despite its unperfected interest, it is entitled to entry of judgment because the perfection date relates back to the pre-petition issuance date of the attachment writ orders. Debtor contends that before Blumenthal can obtain an entry of judgment, the question of whether the attachment was a preferential transfer must be answered.

Section 544 governs the "strong arm" power of the trustee or debtor in possession to avoid security interests in estate assets. 11 U.S.C. §544. The trustee stands in the shoes of a "hypothetical lien creditor" with a lien on the day the bankruptcy petition was filed; hence has the right and power to avoid any lien claims or security interests that are unperfected on the date that the bankruptcy petition is filed. 11 U.S.C. §547(b). A preference is any transfer of interest, including security interest, of the debtor's property (1) to or for the benefit of a creditor, (2) for or on account of an antecedent debt, (3) made within 90 days before the date of filing or one

year if transfer was made to an insider at the time of transfer, and (4) allows the creditor to receive more than it would under a chapter 7 liquidation. See Id. at §547 (b), and (f).

In In re Wind Power Systems, Inc., 841 F.2d 288 (9th Cir. 1988), pursuant to a writ of attachment from the state court, a customer creditor levied upon the debtor's property. Id. at 290. Within 90 days of the levy, the debtor filed for chapter 11 bankruptcy, and the trustee subsequently sought to avoid the lien as a preferential transfer. Id. The Ninth Circuit Court of Appeals (the "Ninth Circuit") was faced with the question of whether "the *creation* of [the creditor]'s lien relates back to the date on which it obtained its [temporary protective order]" – which predated the ninety-day preference period. Id. at 291 (citing Metcalf v. Barker, 187 U.S. 165 (1902)). The Ninth Circuit held that because California law provides for the priority of an attachment lien to relate back to the date of the issuance of the writ of attachment, the lien arose prior to the 90-day preference period and is therefore not voidable under 11 U.S.C. §547. Id. at 291-93.

Here, the Superior Court issued orders for a writ of attachment on March 12, 2016 and an additional writ of attachment on April 4, 2016. Debtor filed its petition on September 26, 2016. Under Wind Power, upon entry of judgment in Superior Court, Blumenthal's liens would relate back to the respective issuance dates. However, unlike the debtor in Wind Power, Blumenthal is a purported insider and therefore is therefore subject to a one-year preference period. See 11 U.S.C. §547(b)(4)(B); cf. Wind Power, 841 F.2d at 292 ("Because the lien was created outside the ninety-day preference period, the Trustee may not avoid it under *section 547*.") The questions of whether Blumenthal is an insider and the other elements of 11 U.S.C. § 547 are fact intensive issues that require further development via discovery. This is the prerequisite step to resolving the issue of Blumenthal's secured status. The only forum to adjudicate a preferential transfer claim is in the bankruptcy court.

The Court is therefore inclined to adjudicate the avoidance issues, and consider the entry of judgment as part of its analysis. This decision is supported by a post-Wind Power Ninth Circuit decision where the bankruptcy court was caught in between a state court action and an adversary proceeding. In In re Jensen, 980 F.2d 1254, 1258-59 (9th Cir. 1992), the Federal Deposit Insurance Corporation (the "FDIC") failed to obtain an entry of judgment on its prejudgment attachment lien

before debtor filed for bankruptcy. The state court deficiency action was referred to the bankruptcy court, and was subsequently consolidated with a motion to object to FDIC's claim and debtor's adversary to avoid the lien. Id. at 1256. The bankruptcy court entered judgment for the FDIC in that action, and allowed the claim as secured. Id. The Ninth Circuit, citing to Wind Power, found that since judgement was entered as required by California law, the perfection of the attachment lien relates back to the writ issuance date. Id. at 1258-59. As a judgment on the issue by the bankruptcy court has the same binding effect as a state court judgment, Blumenthal's right to perfect remains the same even if relief from stay is denied. This offers a better alternative than rendering a purely bankruptcy decision. In In re Southern Cal. Plastics, Inc., 165 F.3d 1243 (9th Cir. 1999), the creditor obtained a prejudgment attachment lien against debtor's property. Id. at 1244. Before creditor obtained a judgment to perfect the lien, the debtor filed bankruptcy. Id. at 1245. The question was whether allowance of the claim in bankruptcy would perfect the attachment lien. Id. at 1246. The Ninth Circuit held that only an entry of judgment, with all of its procedural protections, can perfect an attachment lien under California law – rejecting creditor's claim allowance method of perfection. Id. 1247-1248.

This factor weighs in against relief from stay.

2. The Impact of the Stay on the Parties and the "Balance of Harm"

Blumenthal argues that denial of the motion for relief would delay his right to ascertain the validity and priority status of its $670,000 claim. As a creditor with contingent claims against the estate during a foreseeably long and extensive adversary proceeding will leave Blumenthal's priority status in limbo. The same delay, however, would occur in the state court adjudication, given the complexity of the issues at hand and the possibility that the Superior Court may need to abstain from bankruptcy issues and leave them for this Court to hear.

Blumenthal's contingent liens are preserved as of the date of writ attachment under both Section 108(c) and Wind Power, 841 F.2d 288 (9th Cir. 1988); See 11 U.S.C. §108(c)(tolling during bankruptcy). No judgment creditor with liens perfected after the writ issuance dates (March 21, 2016 and April 4, 2016) may gain priority over Blumenthal's lien. Neither party indicates that Blumenthal's writ of attachment

can be otherwise extinguished by the operation of law. While the State Court Action was dismissed after the settlement, the Superior Court explicitly retained jurisdiction on any breach of the Settlement Agreement, including the entry of judgment. See RJN, Exh. 7, ¶8 ("Jurisdiction is retained by this Court for the purpose of […] entry of Judgment against Defendant Menco as set forth above, in the event that Defendant fails to comply with the terms of the Agreement."); See Southern Cal. Plastics, 165 F.3d at 1248-1249 (even where the state court case was closed and the debtor was unable to reopen the case to obtain a judgment, the appellate court did not deem the liens avoided and remanded to determine whether the debtor is absolutely precluded from entering a judgment to perfect its lien).

The factor weighs against relief from stay.

3. The Lack of Any Connection with or Interference with the Bankruptcy Case

In arguing that his right to an entry of judgment in the Superior Court lacks connection to this bankruptcy, Blumenthal raises the Rooker-Feldman doctrine. He avers that if the Court were to adjudicate the adversary proceeding, it would be a collateral attack on the Superior Court's order approving the Settlement Agreement. This is a critical issue – if keeping the action here runs afoul of the Rooker-Feldman doctrine, relief from stay is mandated as this Court would not have jurisdiction to hear the matter.

The Rooker–Feldman doctrine prohibits federal district and circuit courts from reviewing state court judgments. Where a party did not actually present its federal claims in state court, the Rooker–Feldman doctrine forecloses lower federal court jurisdiction over claims that are "inextricably intertwined" with the claims adjudicated in a state court. See District of Columbia Court of Appeals v. Feldman, 460 U.S. 462, 483 n. 16 (1983). A federal claim is inextricably intertwined with the state-court claims "if the federal claim succeeds only to the extent that the state court wrongly decided the issues before it." Hill v. Town of Conway, 193 F.3d 33, 39 (1st Cir.1999); Sheehan v. Marr, 207 F.3d 35, 39–40 (1st Cir. 2000); see also In re Spookyworld, Inc. v. Town of Berlin, et al (In re Spookyworld, Inc.), 266 B.R. 1, 13–14 (Bankr.D.Mass.2001). The doctrine is applicable in the bankruptcy context. Audre, Inc. v. Casey (In re Audre), 216 B.R. 19 (B.A.P. 9th Cir. 1997). The doctrine applies to judgments from any state court. Worldwide Church of God v. McNair, 805 F.2d

888, 890 (9th Cir. 1986). "The [Rooker-Feldman] doctrine bars a district court from exercising jurisdiction not only over an action explicitly styled as a direct appeal, but also over the '*de facto* equivalent' of such an appeal." C**ooper v. Ramos, 704 F.3d 772, 777 (9th. Cir. 2012)**

Debtor argues that the Rooker-Feldman doctrine does not apply because the Superior Court neither ruled on nor entered a judgment in the State Court Action. The lack of a final judgment is inconsequential. It is clear under Ninth Circuit law that the Rooker-Feldman doctrine applies not only to final state court judgments, but to interlocutory orders and non-final judgments issued by the state court. Doe & Assoc. Law Offices v. Napolitano, 252 F. 3d 1026, 1030 (9th Cir. 2001); Worldwide Church of God v. McNair, 805 F. 2d 888, 893 n.3 (9th Cir. 1986). A settlement agreement has been treated as a final judgment for purposes of the Rooker-Feldman doctrine. King v. Legal Recovery Law Offices, Inc., 2015 U.S. Dist. LEXIS 29816, *9-10 (2014)(quoting Green v. City of New York, 438 F. Supp. 2d 111, 119 (E.D.N.Y. 2006).

Debtor admits that its claims in its adversary complaint arise from the same set of operative facts as the claims in the Superior Court. Opposition, 8:26-9:2. The claims are "inextricably linked" because the removal of the attachment liens as voidable transfers under §544 or §547 would render the Superior Court's settlement order null and void. Cooper v. Ramos, 704 F.3d at 779 (a federal claim and a state claim are "inextricably intertwined" where "the relief requested in the federal action would effectively reverse the state court decision or void its ruling")(citing Fontana Empire Ctr., LLC. v. City of Fontana, 307 F. 3d 897, 992 (9th Cir. 2002).

Debtor argues that adversary proceeding is not a "de facto appeal" because it does not seek to overturn the state court order but to pursue an independent legal cause of action under bankruptcy law. An action is a forbidden "de facto appeal" when the plaintiff (1) asserts as his injury "legal errors by the state court," and (2) seeks as his remedy relief from the state court judgment." Kougasian v. TMSL, 359 F.3d 1136, 1140 (9th Cir. 2004)(quoting Noel v. Hall, 341 F.3d. 1148, 1163 (9th Cir. 2003).

Here, Debtor is alleging a wrongful act, and not a legal error by the Superior Court. The Ninth Circuit in Kougasian v. TMSL explained:

> If a federal plaintiff asserts as a legal wrong an allegedly erroneous decision by a state court, and seeks relief from a state court judgment based on that decision, Rooker-Feldman bars subject matter jurisdiction in federal district court. If, on the other hand, a federal plaintiff asserts as a legal wrong an allegedly illegal act or omission by an adverse party, Rooker-Feldman does not bar jurisdiction.

Kougasian v. TMSL, 359 F.3d 1136, 1140 (9th Cir. 2004)(quoting Noel v. Hall, 341 F.3d. 1148, 1164 (9th Cir. 2003).

Debtor does not claim that the Superior Court erroneously entered the order approving the Settlement Agreement. Rather, it argues the order should be *void ab initio* because Blumenthal allegedly omitted its wrongful underbidding in his capacity as officer and hid costs on five separate projects. Debtor is not seeking to overturn the Settlement as a matter of law, rather it is seeking to raise bankruptcy claims that are independent federal rights, albeit closely related to the State Court Action. Thus, Debtor's action is not a "de facto appeal" and does not fall under the Rooker-Feldman doctrine.

Blumenthal's right to enter judgment is deeply connected with Debtor's bankruptcy case. Menco Pacific's reorganization hinges on whether Blumenthal's $670,000 claim will be allowed as a secured claim, and whether Debtor can retrieve the alleged $876,900 fraudulent payment from Blumenthal.

This factor weighs against relief from stay.[1]

4. Whether the Debtor's Insurance Carrier has Assumed Full Financial Responsibility for the Litigation

No indication has been made that Debtor has an insurance carrier to pursue the State Court Action. Presumably, then, the implication is that Debtor is left to pursue the State Court Action and thereby exhaust assets and efforts Debtor might otherwise contribute towards reorganization. Still, litigating the issue here would expose Debtor to the same costs. Additionally, Debtor would likely be left to litigate elsewhere the claims this Court cannot hear due to limitations Stern imposes on the resolution of the adversary complaint before the Court. This is all before the Court can even address

the issues on the merits.

Thus, although the lack of insurance exposes Debtor to pursue the litigation out of its own pocket and hamper reorganization, Debtor would expend an equal amount of effort and money in proceeding here with its adversary complaint.

This factor weighs neither in favor nor against relief.

5. Whether Litigation in Another Forum Would Prejudice the Interests of Other Creditors, the Creditors' Committee and Other Interested Parties

Debtor argues that relief from stay would result in Blumenthal becoming a secured creditor and thereby prejudice other creditors in the estate. Debtor is conflating relief from stay with a compulsory entry of judgment and an allowance of an automatic secured claim of $670,000. California Code of Civil Procedure requires a prevailing party to serve and file a notice of entry of judgment, which triggers the period in which an appeal by Debtor must be filed. C.C.P. §644.5. Debtor will therefore have the opportunity to appeal the entry of judgment. The stay still applies to the enforcement of any judgment.

Still, relief from the automatic stay in this context goes against the all-important bankruptcy policy of equal distribution among similarly situated creditors. See Valley Bank v. Vance (In re Vance", 721 F.2d 259, 260 (9th Cir. 1983). If Blumenthal becomes a secured creditor, it would over-encumbering the estate's equity in the vehicles, receivable, and accounts. Blumenthal as an adverse creditor has a real possibility of submerging the claims of other creditors. Adjudicating all issues in the bankruptcy court would provide notice to all creditors and parties-in-interest as to the progress of this dispute between Debtor and Blumenthal.

This factor weighs against relief from stay.

6. The Interest of Judicial Economy and the Expeditious and Economical Determination of Litigation for the Parties

The state court action only lasted seven months. RJN, Exh. 8 (Blumenthal filed the state court complaint on November 13, 2015. He filed his "Request for Dismissal" on June 27, 2016). It would not require much time for this Court to familiarize itself with the parties and issues. In fact, in the process of preparing for the

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five concurrent motions on for the December 15, 2016 hearing, the Court has already reviewed the initial complaint and cross-complaint, the orders for attachment writs, Settlement Agreement, and their interplay with the amended adversary complaint.

This factor weighs against relief from stay.

Conclusion

Upon evaluation of the factors above, the Court is inclined to DENY relief from stay.

Party Information

Debtor(s):

Menco Pacific, Inc. — Represented By Jeffrey S Shinbrot

Movant(s):

Jon Blumenthal — Represented By William P Fennell

United States Bankruptcy Court
Central District of California
San Fernando Valley
Judge Maureen Tighe, Presiding
Courtroom 302 Calendar

Friday, April 07, 2017 **Hearing Room 302**

10:00 AM

1:16-12791 Menco Pacific, Inc. **Chapter 11**

#2.01 Motion for Relief from Stay or in the Alternative an Order for Adequate Protection

INTERNATIONAL FIDELITY INSURANCE CO

fr. 3/1/17, 3/28/17

Docket 119

Tentative Ruling:

The critical question here appears to be whether the debtor has a reasonable likelihood of reorganizing and paying the debts for which IFIC has the surety bond. That determination will be made following the testimony.

Party Information

Debtor(s):

Menco Pacific, Inc. Represented By
Jeffrey S Shinbrot

Movant(s):

International Fidelity Insurance Represented By
Mark J Krone

United States Bankruptcy Court
Central District of California
San Fernando Valley
Judge Maureen Tighe, Presiding
Courtroom 302 Calendar

Friday, April 07, 2017 **Hearing Room 302**

10:00 AM
1:16-12791 Menco Pacific, Inc. **Chapter 11**

#3.00 Debtor's Interim hearing on use of cash collateral

fr. 11/17/16, 2/21/17, 3/30/17

Docket 16

Tentative Ruling:

Party Information

Debtor(s):

Menco Pacific, Inc. Represented By
Jeffrey S Shinbrot

10:00 AM
1:16-12791 Menco Pacific, Inc. **Chapter 11**

#4.00 Motio for Authority to Sell Vehicles to Carmax

Docket 165

Tentative Ruling:

Menco Pacific, Inc. ("Debtor") moves for authority to sell fifteen (15) unused vehicles. Motion for Authority to Sell Vehicles to CarMax (the "Motion to Sell"), ECF No. 165. Debtor also requests authority to pay up to $2,500 for transportation costs.

Pursuant to 11 U.S.C. §363, the trustee, after notice and hearing, may use, sell, or lease, other than in the ordinary course of business, property of the estate. The trustee may sell property of the estate free and clear of any interest in such property of an entity other than the estate, only if (1) applicable nonbankruptcy law permits sale of such property free and clear of such interest; (2) such entity consents; (3) such interest is a lien and the price at which such property is to be sold is greater than the aggregate value of all liens on such property; (4) such interest is in bona fide dispute; or (5) such entity could be compelled, in a legal or equitable proceeding, to accept a money satisfaction of such interest. 11 U.S.C. §363(f).

(1) Segregated Account for Sale Proceeds

Jon Blumenthal does not oppose to the sale of the vehicles; he only requests that the sale proceeds be placed in "separate blocked account from which there cannot be any withdrawals pending without further order of this Court or a court of competent jurisdiction (in the even this case is dismissed)." Limited Opposition and Statement of Position, 3:16-20.

While Blumenthal’s concerns are well-taken, its request is onerous to Debtor and unnecessary given the safeguard of David Goodrich as a CRO. Debtor states that he will place the proceeds in a "segregated debtor-in-possession cash collateral account pending further Order of this Court." Motion to Sell, Ex. 2, "Declaration of David M. Goodrich," 8-9. This task fits within the very purpose of appointing Goodrich to ensure that an independent party who is free of conflicts is at the helm of Menco Pacific. He will use his discretion to maintain the finances of the company

10:00 AM

CONT... Menco Pacific, Inc. **Chapter 11**

while cooperating with creditors to craft a plan of reorganization. Blumenthal's request is denied.

(2) CarMax Appraisals

Blumenthal contends that the attached appraisals are outdated. See Id. at Ex. 2 (The CarMax appraisal offers were only valid until close of business on June 20, 2016 or June 21, 2016.). The Court agrees with debtor that to transport all vehicles to CarMax for an appraisal is too costly since it is CarMax's policy that its offers are only valid for seven (7) days. Rather, Debtor's proposal to obtain an approval of the Motion to Sell before transport of the vehicles to CarMax is a more cost effective method to sell the vehicles.

Motion GRANTED.

Party Information

Debtor(s):

Menco Pacific, Inc. Represented By
Jeffrey S Shinbrot

United States Bankruptcy Court
Central District of California
San Fernando Valley
Judge Maureen Tighe, Presiding
Courtroom 302 Calendar

Friday, April 07, 2017 **Hearing Room 302**

10:00 AM

1:16-12791 Menco Pacific, Inc. **Chapter 11**

#5.00 Motio to Convert Chapter 11 case to a Chapter 7 case or to Dismiss

Docket 173

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Menco Pacific, Inc. Represented By
Jeffrey S Shinbrot

United States Bankruptcy Court
Central District of California
San Fernando Valley
Judge Maureen Tighe, Presiding
Courtroom 302 Calendar

Friday, April 07, 2017 **Hearing Room 302**

10:00 AM

1:16-12791 Menco Pacific, Inc. **Chapter 11**

Adv#: 1:16-01140 Menco Pacific, Inc. v. Blumenthal

#6.00 Status Conference re: SECOND Amended Complaint For 1. Avoidance, Recovery, and Preservation of Intentional Fraudulent Transfers; 2. Avoidance, Recovery, and Preservation of Constructive Fraudulent Transfers; and 3.Avoidance, Recovery, and Preservation of Preferential Transfers

fr. 12/14/16; 12/15/16, 2/21/17; 3/30/17

Docket 31

Tentative Ruling:

As there is a motion to dismiss pending for April 26, 2017 at 1 pm, unless there are updates or questions, this will be continued to that date.

Party Information

Debtor(s):

Menco Pacific, Inc.	Represented By Jeffrey S Shinbrot

Defendant(s):

Jon Blumenthal	Represented By William P Fennell

Plaintiff(s):

Menco Pacific, Inc.	Represented By Jeffrey S Shinbrot

United States Bankruptcy Court
Central District of California
San Fernando Valley
Judge Maureen Tighe, Presiding
Courtroom 302 Calendar

Friday, April 07, 2017 **Hearing Room 302**

10:00 AM
1:16-12791 Menco Pacific, Inc. **Chapter 11**

#7.00 Status and Case Management Conference

fr. 11/17/16; 12/15/16, 2/21/17; 3/1/17, 3/28/17

Docket 1

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Menco Pacific, Inc. Represented By
Jeffrey S Shinbrot

United States Bankruptcy Court
Central District of California
San Fernando Valley
Judge Maureen Tighe, Presiding
Courtroom 302 Calendar

Friday, April 07, 2017 **Hearing Room 302**

2:00 PM

1:16-12783 Martin Luna and Icela Teresa Luna **Chapter 13**

#8.00 Evid. Hearing
Motion to Avoid Lien Junior Lien with Aran Investments, Inc.

fr. 1/24/17, 2/28/17, 3/28/17

Docket 24

***** VACATED *** REASON: Opposition to Motion withdrawn (doc. 39) - hm**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Martin Luna — Represented By Luis G Torres

Joint Debtor(s):

Icela Teresa Luna — Represented By Luis G Torres

Trustee(s):

Elizabeth (SV) F Rojas (TR) — Pro Se

United States Bankruptcy Court
Central District of California
San Fernando Valley
Judge Maureen Tighe, Presiding
Courtroom 302 Calendar

Friday, April 07, 2017 **Hearing Room 302**

2:00 PM

1:16-12783 Martin Luna and Icela Teresa Luna **Chapter 13**

#9.00 Motion for relief from stay

ARAN INVESTMENTS, INC.

fr. 12/7/16, 2/1/17, 3/1/17, 3/28/17

Docket 20

***** VACATED *** REASON: Motion withdrawn (doc. 40) - hm**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Martin Luna	Represented By Luis G Torres

Joint Debtor(s):

Icela Teresa Luna	Represented By Luis G Torres

Movant(s):

Aran Investments, Inc., its	Represented By Michelle R Ghidotti

Trustee(s):

Elizabeth (SV) F Rojas (TR)	Pro Se